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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

In re Patent Application of:

George G. NEUMAN

Serial No.: 09/625,420

Filed: July 24, 2000

Date: October 18, 2004

Group Art Unit: 3626

Examiner: Vanel Frenel

For: METHOD AND APPARATUS FOR MATCHING CONSUMER OF
HEALTHCARE SERVICES TO HEALTHCARE SERVICE PROVIDERS

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

APPEAL BRIEF UNDER 37 C.F.R. §1.192

Sir:

This appeal concerns the propriety of the Examiner's rejection mailed April 2, 2004 in connection with the above-identified application.

A Notice of Appeal was filed on August 18, 2004. Accompanying this Appeal Brief is our check No. 18424, in payment of the fee set forth in 37 C.F.R. §1.17(c).

The present Appeal Brief is filed in triplicate in accordance with 37 C.F.R. § 1.192(a).

In the event that the actual fee is greater than the payment submitted, is inadvertently not enclosed, or any additional fee due during the pendency of this application is not paid the Patent and Trademark Office is authorized to charge the underpayment to Deposit Account No. 15-0700.

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STATUS OF CLAIMS

Claims 1-48 are pending.

Claims 1-48 have been rejected and are on appeal herein.

SUMMARY OF INVENTION

According to the present invention, a system is provided to match a consumer of healthcare services to a healthcare service provider over a communications network. The system includes a computer terminal, a network server and a computer program including a service provider database identifying a plurality of healthcare service providers and associated healthcare service products offered by the service provider. The system further comprises a first software portion for automatically determining at least one treatment option based on a diagnosis provided by the consumer or determined by an alternative diagnosis determiner. The system is also capable of automatically determining an appropriate service provider for the at least one treatment option including an appropriate service provider for each treatment option if there is more than one treatment option. The "treatment preferences" allow prioritization or selection of at least one of a number of factors such as geographical location of the service provider, insurance plan participation, cost, provider experience with the at least one treatment option and provider outcome with respect to the at least one treatment option. Accordingly, the system of the invention automatically determines at least one appropriate service provider based on at least one of the defined treatment preferences. So, for example, the program can be set up such that once the treatment options are determined, the service provider is automatically determined based upon geographical location of the service provider or insurance plan participation or cost or provider experience with the treatment option or provider outcome with respect to the treatment option. Alternatively, more than one of the treatment preferences can be used to

determine the appropriate service provider or all of the treatment preferences can be utilized to determine the appropriate service provider (or only one treatment preference can be used to make this determination).

ISSUE

- I. Would the subject matter recited in claims 1-48 (reproduced in the attached appendix) be obvious at the time of invention to one of ordinary skill in the art under 35 U.S.C. § 103 (a) over Lavin et al. (U.S. Patent No. 5,772,585) (hereinafter “Lavin”), in view of Kraftson et al. (U.S. Patent No. 6,151,581) (hereinafter “Kraftson”)?

GROUPING OF CLAIMS

Claims 1, 17 and 33 are believed to be independently patentable. Grouping of claims 1-16, 17-32 and 33-48 respectively stand and fall together.

ARGUMENT

I. CLAIMS 1-48 ARE NOT OBVIOUS OVER LAVIN IN VIEW OF KRAFTSON UNDER 35 U.S.C. §103(A)

A. The Suggested Combination Of Lavin And Kraftson Does Not Disclose, Teach, Or Suggest Each And Every Feature Of The Pending Claims.

Claim 1 relates to “[a] system to match a consumer of health care services to a health care service provider over a communications network, the system comprising: at least one computer terminal associated with the consumer for allowing the consumer access to the communications network; a network server coupled to the communications network, the server comprising a computer program having; a service provider data base identifying a plurality of health care service providers and associated health care service products offered by the service

providers; a first software portion for automatically determining at least one treatment option based on a diagnosis provided by the consumer or determined by an alternative diagnosis determiner; and a second software portion for automatically determining at least one appropriate service provider based on a treatment preference, the treatment preference comprising at least one of geographical location of the provider, insurance plan participation, cost, provider experience with the treatment and provider outcome with respect to the treatment.” (Application, Claim 1).

Lavin purportedly relates to “a system and method for managing patient medical information.” More particularly, this patent disclosure relates to a system and method for improving medical clinic information management and examination information handling.” (See Lavin, col. 1, lines 15-20). As characterized, “[t]he method comprises a computer aided process including the steps of scheduling appointments, entering and displaying data to a physician, updating the patient data with progress notes concurrently with an examination, displaying allergy warnings and recording a diagnosis based on progress notes.” (Lavin, Abstract).

Kraftson purportedly relates “to the field of database population and processing, and more specifically to receiving and processing physician clinical and patient care survey information, and providing health outcomes and clinical practice information for physician patient care and practice quality improvement.” (Kraftson, Col. 1, lines 13-19). As characterized, the “system encompasses (i) designing and administering paper and pen and hand held computer survey instruments; (ii) administering and collecting completed surveys; (iii) building and managing a database of information collected from the surveys; (iv) analyzing data collected from the surveys; (v) and providing clinical practices with summary information.” (Kraftson, Abstract).

To establish a prima facie case of obviousness of a claimed invention, the Examiner must show that the suggested combination teaches or suggests all of the claim limitations. In re Royka, 490 F.2d 981 (CCPA 1974); M.P.E.P. 2143.03. “All words in a claim must be considered in judging the patentability of that claim against the prior art.” In re Wilson, 424 F.2d 1382, 1385 (CCPA 1970) (emphasis added); M.P.E.P. 2143.03. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071 (Fed Cir. 1988); M.P.E.P. 2143.03.

In accordance with this standard, it is respectfully submitted that the combination of Lavin and Kraftson does not disclose, teach, or suggest a “system comprising: . . . a service provider data base identifying a plurality of health care service providers and associated health care service products offered by the service providers, a first software portion for automatically determining at least one treatment option based on a diagnosis provided by the consumer or determined by an alternative diagnosis determiner; and a second software portion for automatically determining at least one appropriate service provider based on a treatment preference,” as recited in Claim 1. As will be described below, the combination of Lavin and Kraftson does not disclose, teach, or suggest each and every feature of the claim 1.

As described above, Lavin is primarily concerned with “managing a patient’s medical information,” and is not concerned with matching consumers of health care products to providers of health care service products. In fact, the Examiner conceded that Lavin does not teach or disclose the first and second software portions. (See, Office Action, mailed April 2, 2004, p. 3, second paragraph). As shown and described throughout Lavin, the system merely allows a medical clinical staff to schedule physician examinations for patients. (Lavin, Col. 5, line 36 - Col. 6, line 67). Lavin is a system for managing patient medical records, not a system

including (1) a software portion for automatically determining at least one treatment option and (2) a software portion for automatically determining an appropriate service provider based on a treatment preference, wherein the treatment preference may include the geographical location of the provider, insurance plan participation, cost, provider experience with the at least one treatment option and provider outcome with respect to the at least one treatment option.

Regarding Kraftson, Applicant recognizes that this reference refers to “providing health outcomes and clinical practice information,” however, the reference does not discuss or suggest the matching of consumers of health care services to providers of health care service products. Instead, Kraftson relates to a system of collecting information for a database relevant to patient care. Summary information is developed to improve patient care, health outcomes and physician practice management. Reference to treatments in Kraftson, see, Kraftson, col. 1, are classic physician determined treatments based on the physician’s evaluation of the patient. In contrast, the present invention utilizes a computer program to automatically determine at least one treatment option based upon a diagnosis which can be provided by the consumer (e.g. based on a physicians prior diagnosis) or can be determined by an alternative diagnosis determiner. In fact, Kraftson does not show any automatic computer means for determining an appropriate treatment option. Kraftson is merely a system for collecting and populating a database with physician/patient data for processing to improve practice quality and healthcare delivery, for example, for retrospective analysis of the data to improve future performance. The system of Kraftson is directed to collecting patient information from surveys and analyzing the data to improve patient care, health outcomes and the management of physician practices. It does not teach or suggest (1) a software portion for automatically determining at least one treatment option and (2) a software portion for automatically determining an appropriate service provider

based on a treatment preference. Accordingly, Kraftson does not teach or suggest the invention, taken alone or in combination with Lavin.

Further distinguishable from the references, both the first and second software portions operate automatically. That is, the first software portion automatically determines at least one treatment option and the second software portion automatically determines at least one appropriate service provider based upon a treatment preference. The Examiner previously suggested the incorporation of language illustrating the automatic functionality of the software portions during a telephone interview in order to overcome a prior obviousness rejection. (Telephone Interview With Examiner, December 17, 2003). It is submitted that this language distinguishes manual methods of determining a treatment option and an appropriate service provider. Accordingly, the system of Kraftson is not directed, nor does it fairly suggest, alone or in combination with Lavin, a system that automatically matches consumers of health care services to providers of health care service products.

For at least the foregoing reasons, Claim 1 is allowable over the combination of Lavin and Kraftson. Furthermore, since Claims 17 and 33 contain features analogous to Claim 1, and Claims 2-16 ultimately depend on Claim 1, Claims 18 - 32 ultimately depend on Claim 17, and Claims 34-48 ultimately depend on Claim 33, it is also respectfully submitted that Claims 2-48 are not obvious over Lavin in view of Kraftson under 35 U.S.C. §103(a) for at least the same reasons.

B. Lavin Is A Non-Analogous Art.

“In order to rely on a reference as a basis for rejection of an applicant’s invention, the reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” In re Oetiker, 977 F.2d 1443 (Fed. Cir. 1992); M.P.E.P. §2141.01(a).

Lavin discloses “a system and method for managing patient medical information. More particularly, this invention relates to a system and method for improving medical clinic information management and examination information handling.” (Lavin, Col. 1, lines 16-20). In contrast, the present invention “relates to a system which can be used by both individual patients and corporate consumers of medical services to determine who the appropriate provider of medical services for the consumer should be.” (Application, p. 1, lines 5-8). “The present invention relates generally to a system and process that allows the consumer to obtain health care services and the provider to market those services over the Internet.” (Application, p. 2, lines 10-23). “Competitive marketing of health care services through e-commerce is an intrinsic element of the system.” (Application, p. 3, lines 7-8). Whereas Lavin relates to a form of database management, the present invention relates to a form of e-commerce. As such, it is respectfully submitted that Lavin is not in the field of the applicant’s endeavor.

Furthermore, Lavin is not remotely pertinent to the particular problem with which the present invention is concerned. The present invention fills the void of a system or process that facilitates competitive marketing of health care services to the consumer. (Application, p. 2). Lavin, on the other hand, merely relates to managing and better organizing patients’ medical information. As such, it is respectfully submitted that Lavin is not reasonably pertinent to the particular problem with which the Applicant is concerned.

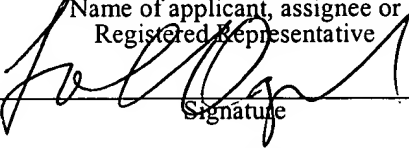
For at least the foregoing reasons, Lavin is non-analogous art as applied against the present application. As such, Lavin may not form the basis (either in whole or in part) of obviousness rejections of claims 1-48.

CONCLUSION

For the foregoing reasons, Applicant respectfully submits that the Examiner's citations do not make obvious the claimed subject matter as a whole. Accordingly, rejection of claims 1-48 under 35 U.S.C. § 103 should be reversed.

If this communication is filed after the shortened statutory time period has elapsed and no separate Petition is enclosed, the Commissioner of Patents and Trademarks is petitioned, under 37 C.F.R. §1.136(a), to extend the time for filing a response to the outstanding Office Action by the number of months which will avoid abandonment under 37 C.F.R. §1.135. The fee under 37 C.F.R. §1.17 should be charged to our Deposit Account No. 15-0700.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on October 18, 2004.

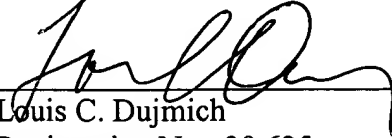
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Signature

October 18, 2004

Date of Signature

Respectfully submitted,



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APPENDIX

THE CLAIMS ON APPEAL ARE:

1. A system to match a consumer of health care services to a health care service provider over a communications network, the system comprising:
 - at least one computer terminal associated with the consumer for allowing the consumer access to the communications network;
 - a network server coupled to the communications network, the server comprising a computer program having:
 - a service provider data base identifying a plurality of health care service providers and associated health care service products offered by the service providers;
 - a first software portion for automatically determining at least one treatment option based on a diagnosis provided by the consumer or determined by an alternative diagnosis determiner; and
 - a second software portion for automatically determining at least one appropriate service provider based on a treatment preference, the treatment preference comprising at least one of:
 - geographical location of the provider,
 - insurance plan participation,
 - cost,
 - provider experience with the at least one treatment option and
 - provider outcome with respect to the at least one treatment option.

2. The system of claim 1, wherein the service provider data base comprises information related to a plurality of service providers, medical products offered by each provider, the provider's experience with each medical product, outcome of each provider with respect to each product, price for each product, description of each product and demographic location of each provider.

3. The system of claim 1, further wherein the first software portion automatically determines the number of treatment options based on the diagnosis.

4. The system of claim 3, wherein the first software portion allows selection of treatment option if more than one treatment option is available.

5. The system of claim 1, wherein the alternative diagnosis determiner comprises one of a link to a medical diagnosis database and a referral to a physician.

6. The system of claim 4, wherein the first software portion accesses the service provider database to describe the treatment option when more than one treatment option is available.

7. The system of claim 6, wherein the first software portion allows the consumer to obtain a referral to a physician to assist in understanding of treatment options.

8. The system of claim 1, wherein, after the consumer is matched to a service provider, an identification number is issued.
9. The system of claim 8, further comprising a link to the service provider.
10. The system of claim 1, further comprising a consumer data base obtained from the second software portion comprising information related to the consumer's choice of service provider.
11. The system of claim 10, wherein the consumer database is coupled to the service provider data base for updating the service provider data base.
12. The system of claim 1, wherein the second software portion has an input from the service provider data base to determine the at least one appropriate service provider.
13. The system of claim 1, wherein provider outcome includes an indication of consumer satisfaction.
14. The system of claim 1, further wherein the cost treatment preference includes the capability to offer a reduced cost for greater usage.
15. The system of claim 1, further comprising the capability to prioritize the treatment preferences in a selected order.

16. The system of claim 1, further comprising a program flow for charging the consumer a fee to participate in the system.

17. A method to match a consumer of health care services to a health care service provider over a communications network, the method comprising:

allowing the consumer to access the communications network to connect to a network server coupled to the communications network, the server comprising a computer program having a service provider data base identifying a plurality of health care service providers and associated health care service products offered by the service providers;

automatically determining with the computer program at least one treatment option based on a diagnosis provided by the consumer or determined by an alternative diagnosis determiner; and

automatically determining with the computer program at least one appropriate service provider based on a treatment preference, the treatment preference comprising at least one of

geographical location of the provider,

insurance plan participation,

cost,

provider experience with the at least one treatment option, and

provider outcome with respect to the at least one treatment option.

18. The method of claim 17, wherein the service provider data base comprises information related to a plurality of service providers, medical products offered by each provider, the provider's experience with each medical product, outcome of each provider with respect to

each product, price for each product, description of each product and demographic location of each provider.

19. The method of claim 17, further wherein the first step of automatically determining comprises automatically determining the number of treatment options based on the diagnosis.

20. The method of claim 19, where the first step of automatically determining allows selection of a treatment option if more than one treatment option is available.

21. The method of claim 17, wherein the alternative diagnosis determiner comprises one of a link to a medical diagnosis database and a referral to a physician.

22. The method of claim 20, wherein the first step of automatically determining comprises accessing the service provider database to describe the treatment option when more than one treatment option is available.

23. The method of claim 22, wherein the first step of automatically determining allows the consumer to obtain a referral to a physician to assist in understanding of treatment options.

24. The method of claim 17, further comprising, after the consumer is matched to a service provider, issuing an identification number.

25. The method of claim 24, further comprising providing a link to the service provider.
26. The method of claim 17, further comprising generating a consumer data base comprising information related to the consumer's choice of service provider.
27. The method of claim 26, wherein the consumer database is coupled to the service provider data base for updating the service provider data base.
28. The method of claim 17, further comprising providing an input from the service provider data base to enable said second step of determining to determine the at least one appropriate service provider.
29. The method of claim 17, wherein provider outcome includes an indication of consumer satisfaction.
30. The method of claim 17, further wherein the cost treatment preference includes the capability to offer a reduced cost for greater usage.
31. The method of claim 17, further comprising the capability to prioritize the treatment preferences in a selected order.
32. The method of claim 17, further comprising charging the consumer a fee to participate.

33. A computer readable storage medium for a program for operating a system to match a consumer of health care services to a health care service provider over a communication network coupling at least one computer terminal associated with the consumer for allowing the consumer access to the computer network and a network server, the computer readable storage medium comprising a computer program comprising:

a service provider data base identifying a plurality of health care service providers and associated health care service products offered by the service providers;

a first software portion for automatically determining at least one treatment option based on a diagnosis provided by the consumer or determined by an alternative diagnosis determiner; and

a second software portion for automatically determining at least one appropriate service provider based on a treatment preference, the treatment preference comprising at least one of:

geographical location of the provider,

insurance plan participation,

cost,

provider experience with the at least one treatment option and

provider outcome with respect to the at least one treatment option.

34. The storage medium of claim 33, wherein the service provider data base comprises information related to a plurality of service providers, medical products offered by each provider, the provider's experience with each medical product, outcome of each provider with respect to each product, price for each product, description of each product and demographic location of each provider.

35. The storage medium of claim 33, further wherein the first software portion automatically determines the number of treatment options available based on the diagnosis.

36. The storage medium of claim 35, wherein the first software portion allows a selection of treatment options if more than one treatment option is available.

37. The storage medium of claim 33, wherein the alternative diagnosis determiner comprises one of a link to a medical diagnosis database and a referral to a physician.

38. The storage medium of claim 36, wherein the first software portion accesses the service provider database to describe the treatment option when more than one treatment option is available.

39. The storage medium of claim 38, wherein the first software portion allows the consumer to obtain a referral to a physician to assist in understanding of treatment options.

40. The storage medium of claim 33, wherein, after the consumer is matched to a service provider, an identification number is issued.

41. The storage medium of claim 40, further comprising a link to the service provider.

42. The storage medium of claim 33, further comprising a consumer data base obtained from the second software portion comprising information related to the consumer's choice of service provider.

43. The storage medium of claim 42, wherein the consumer database is coupled to the service provider data base for updating the service provider data base.

44. The storage medium of claim 33, wherein the second software portion has an input from the service provider data base to determine the at least one appropriate service provider.

45. The storage medium of claim 33, wherein provider outcome includes an indication of consumer satisfaction.

46. The storage medium of claim 33, further wherein the cost treatment preference includes the capability to offer a reduced cost for greater usage.

47. The storage medium of claim 33, further comprising the capability to prioritize the treatment preferences in a selected order.

48. The storage medium of claim 33, further comprising a program flow for charging the consumer a fee to participate.